

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

P.W. ARMS, INC., a
Washington corporation,

Plaintiff,

v.

UNITED STATES OF AMERICA and the
BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES, a Federal
Agency,

Defendants.

No. 2:15-cv-01990 JCC

**[PROPOSED] ORDER
GRANTING PLAINTIFF P.W.
ARMS, INC.'S MOTION TO
SUPPLEMENT THE
ADMINISTRATIVE RECORD
AND STRIKE PORTIONS OF
THE ADMINISTRATIVE
RECORD**

This matter came before the Court on Plaintiff P.W. Arm's (PWA) Motion to Supplement the Administrative Record and Strike Portions of the Administrative Record, the Administrative Record being that record which the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) filed in response to PWA's claim under the Administrative Procedure Act (APA).

After having considered the motion, papers filed in opposition, the certified administrative record, and the pleadings on file, the Court hereby finds that ATF directly, or at least indirectly, relied on (1) the October 31, 1986 letter by ATF Deputy Director William Drake (the Drake letter) (Dkt. # 26-1, Exhibit 1), (2) the Declaration of William Majors, paragraph 22

[PROPOSED] ORDER GRANTING PWA'S MOTION TO SUPPLEMENT
AND TO STRIKE CERTAIN PORTIONS OF THE ADMINISTRATIVE
RECORD- 1

McKay Chadwell, PLLC
600 University Street, Suite 1601
Seattle, Washington 98101-4124
(206) 233-2800 Fax (206) 233-2809

1 only (Majors' Declaration) (Dkt. # 11 at ¶22), (3) the January 28, 2014 email of which the
2 subject line reads, "Importer Stacy Prineas (PW Arms)" (Administrative Record (AR) 113), (4)
3 the entire book from which two pages were excerpted (AR 45-46), and (5) ATF's April 7, 2014
4 email to E. Griffith (Dkt. # 26-1, Exhibit 2).

5 The Court further finds that both Majors' Declaration and the Drake letter are necessary
6 to determine whether ATF considered all relevant factors and explained its decision to classify
7 7N6 as 'armor piercing.'

8 The Court further finds that both Majors' Declaration and the Drake letter are necessary
9 to explain ATF's position regarding the term 'armor piercing ammunition,' the subject of PWA's
10 APA summary judgment motion.
11

12 The Court further finds that PWA documented that ATF's interpretation of 'armor
13 piercing ammunition' as stated in its cross-motion for summary judgment was inconsistent with
14 ATF's historical interpretation, as documented by the Drake letter, and inconsistent with ATF's
15 very recent interpretation, as documented by Majors' Declaration. *See* Dkt. # 26, pp. 4, 12-14,
16 16. The Court finds that this supports a showing of ATF's bad faith.
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18 The Court further finds that both Majors' Declaration and the Drake letter provide
19 necessary background information on how ATF historically and currently interpreted 18 U.S.C.
20 § 921(a)(17)(B)(i). Following, the Court will consider these documents when deciding PWA's
21 pending APA summary judgment motion.
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23 The Court further finds that a proper administrative record generally only includes
24 materials that were before ATF at the time its decision was made to classify 7N6 as 'armor
25 piercing,' which was on April 7, 2014. *See* AR 37. Following, this Court finds that ATF
26 improperly submitted as part of the Administrative Record documents regarding internet
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1 research into “commercially available” handguns conducted by ATF after April 7, 2014 (*see* AR
2 51-59, 156-215) and ATF’s June 2, 2014 letter responding to PWA’s counsel, in which ATF
3 raised for the first time its position that only the “center and innermost foundation” constitute
4 7N6’s core (*see* AR 43-44).

5 The Court further finds that ATF’s document, created after April 7, 2014, documents
6 ATF’s position that “ATF does not consider there to be a difference between a partial and full
7 steel core.” AR 143. This is contrary to ATF’s position as stated in ATF’s cross-motion for
8 summary judgment (*see* Dkt. # 24) and is properly part of the Administrative Record because it
9 documents what ATF’s position was before and on April 7, 2014, when ATF classified 7N6 as
10 ‘armor piercing.’
11

12 THE COURT HEREBY ORDERS that ATF shall supplement the Administrative Record
13 with (1) the Drake letter (Dkt. # 26-1, Exhibit 1), (2) Majors’ Declaration (Dkt. # 11 at ¶22), (3)
14 a complete and legible copy of the January 28, 2014 email of which the subject line reads,
15 “Importer Stacy Prineas (PW Arms)” (*see* AR 113), (4) the entire book from which ATF
16 excerpted two pages (*see* AR 45-46), and (5) ATF’s April 7, 2014 email to E. Griffith (Dkt. # 26-
17 1, Exhibit 2).
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20 Further, IT IS ORDERED that the following documents are struck from the
21 Administrative Record: AR 51-59, 156-215 -- documents regarding internet research into
22 “commercially available” handguns conducted by ATF after April 7, 2014, and AR 43-44 --
23 ATF’s June 2, 2014 letter responding to PWA’s counsel, in which ATF raised for the first time
24 its position that only the “center and innermost foundation” constitute 7N6’s core.
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1 DATED this ____ day of _____, 2016.

2
3 _____
4 Honorable John C. Coughenour
5 UNITED STATES DISTRICT JUDGE

6 Presented by:

7 **McKay Chadwell, PLLC**

8 By s/ Robert G. Chadwell

9 By s/ Patrick J. Preston

10 By s/ Thomas M. Brennan

11 Robert G. Chadwell, WSBA No. 22683

12 Patrick J. Preston, WSBA No. 24361

13 Thomas M. Brennan, WSBA No. 30662

14 Attorneys for Plaintiff P.W. Arms, Inc.

15 600 University Street, Suite 1601

16 Seattle, WA 98101-4124

17 Phone: (206) 233-2800

18 Fax: (206) 233-2809

19 Email: rgcl@mckay-chadwell.com

20 pjp@mckay-chadwell.com

21 tmb@mckay-chadwell.com